

Application No. 10/582,861
Amendment Dated: June 17, 2009
Reply to Office Action of March 20, 2009

Docket No.: 4456-0109PUS1

AMENDMENTS TO THE DRAWINGS

Please replace Figure 1 with Replacement Figure 1 enclosed herewith.

REMARKS

Amendments to the Drawings

As noted above, Replacement Figure 1 is submitted herewith to replace Figure 1 as-filed. No new matter is entered by way of this amendment.

Status of the Claims

Claims 5, 6, 8, 10-11, and 13-14 are pending in the present application. Claims 1-4, 7, 9, and 12 are canceled. Claims 15-18 are new. Claim 10 is withdrawn from consideration as directed to a non-elected invention. Claim 6 is amended to incorporate the elements of claim 5. Claims 11, 13, and 14 are amended to depend solely from claim 5. Claim 10 is amended to depend solely from claim 8 and to cancel any references to the elements of canceled claim 7. Specifically, the phrase "a fusion cell composed of the cell according to claim 7 and a myeloma cell, or" is canceled from claim 10. Support for new claims 15-18 is found in original claims 5 and 6. The claims are canceled or amended without prejudice or disclaimer. No new matter is entered by way of these amendments. Reconsideration is respectfully requested.

Request for Rejoinder

In the restriction requirement issued on October 16, 2008, the Examiner required an election between Group I (claims 1-6, 8, 10 (in part) and 11-14) and Group II (claims 7, 9 and 10 (in part)). The Examiner indicated that Group I was directed to anti-gp120 antibodies and compositions thereof including kits, cells capable of producing the antibodies, and methods thereof. Group II was directed to high affinity antibody-producing cells derived from a GANP transgenic mammal. Applicants elected Group I, *i.e.*, claims 1-6, 8, and 10 (in part).

As amended, claim 10 depends solely from claim 8 and does not incorporate the elements of Group II. Accordingly, Applicants request rejoinder of claim 10 with pending claims 5, 6, 8, 11, 13 and 14.

Objection to the Drawings

The Examiner objects to Figure 1, *see Office Action*, page 4. Specifically, the Examiner states that the upper panel of Figure 1 is unintelligible, *see Office Action*, page 3. Applicants submit herewith a replacement Figure 1, which provides a clear depiction of the upper panel. Accordingly, Applicants respectfully request withdrawal of the rejection.

Claim Objections

Claims 1 and 4 are objected to for informalities. Claims 1 and 4 are canceled. Accordingly, the objection is moot.

Issues Under 35 U.S.C. § 112, First Paragraph, Enablement

Claims 5 and 8 are rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the enablement requirement, *see Office Action*, pages 4-5. This rejection concerns the biological deposit of the strain recited in the claims. The Examiner wishes to ascertain whether the strain was deposited in accordance with the Budapest Treaty and if the strain is available to the public.

Applicants submit that the strain was deposited in accordance with the Budapest Treaty. In addition, Applicants submit that the strain was deposited with the International Patent Organism Depository (IPOD) and the National Institute of Advanced Industrial Science and Technology (AIST), which are recognized as official depository authorities in Japan. (*See*, the application as originally filed at, for instance, pages 2, lines 27-32, and MPEP § 2405).

Furthermore, Applicants assure the Examiner that the deposit will be available to the public according to 37 C.F.R. § 1.808, during the pendency of the present application upon request by proper parties determined to be entitled to such access by the Director under 37 C.F.R. § 1.14 and 35 U.S.C. § 122, and that once allowed, all such restrictions on access to the samples will be removed.

Therefore, reconsideration and withdrawal of the rejection of claims 5 and 8 as lacking enablement support is respectfully requested.

Issues Under 35 U.S.C. § 102(b)

Claims 1-4 and 13 are rejected under 35 U.S.C. § 102(b) as allegedly anticipated by Laman *et al.*, *Journal Virology*, 1992, 66:1823-1831, ("Lamen"), *see Office Action*, pages 5-6. Applicants respectfully traverse.

In an effort to expedite prosecution, claims 1-4 are canceled. Accordingly, the rejection is moot in regard to these claims. Claim 13, as amended, depends solely from independent claim 5. Claim 5 is not rejected under 35 U.S.C. § 102(b) as allegedly anticipated by Lamen. Accordingly, claim 13, which incorporates all of the elements of independent claim 5, is also not anticipated by Lamen. Based upon the foregoing, Applicants respectfully request withdrawal of the rejection.

Issues Under 35 U.S.C. § 103(a)

Claim 14

Claim 14 is rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Laman, *see Office Action*, pages 6-7. Applicants respectfully traverse.

Claim 14 is amended to depend solely from independent claim 5. As noted above, independent claim 5 is not rejected under 35 U.S.C. § 102(b) as allegedly anticipated by Laman. In addition, claim 5 is not rejected as allegedly obvious over Laman. Accordingly, claim 14, which incorporates all of the elements of independent claim 5 is also not obvious in view of Laman. Based upon the foregoing, Applicants respectfully request withdrawal of the rejection.

Claims 6, 11, and 12

Claims 6, 11, and 12, are rejected under 35 U.S.C. § 103(a) as allegedly obvious over Laman in view of Okamoto *et al.*, *Journal of Immunology*, 1998, 160:69-76, ("Okamoto"). Applicants respectfully traverse.

Claim 12 is canceled. Accordingly, the rejection is moot in regard to this claim.

Claim 6, as amended, incorporates the elements of independent claim 5. Claim 11, as amended, depends solely from independent claim 5. As noted above, independent claim 5 is not rejected under 35 U.S.C. § 102(b) or 35 U.S.C. § 103(a) as allegedly anticipated by or obvious

Application No. 10/582,861
Amendment Dated: June 17, 2009
Reply to Office Action of March 20, 2009

Docket No.: 4456-0109PUS1

over Laman, alone, or in view of Okamoto. Accordingly, claims 6 and 11, which incorporate all of the elements of independent claim 5, are also not obvious over Laman in view of Okamoto. Based upon the foregoing, Applicants respectfully request withdrawal of the rejection.

CONCLUSION

In view of the above amendments and remarks, Applicants submit that the present application is in condition for allowance. Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Linda T. Parker, Reg. No. 46,046, at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

Dated: **JUN 18 2009**

Respectfully submitted,

By 

Gerald M. Murphy, Jr.

Registration No.: 28,977

BIRCH, STEWART, KOLASCH & BIRCH, LLP

8110 Gatehouse Road

Suite 100 East

P.O. Box 747

Falls Church, Virginia 22040-0747

(703) 205-8000

Attorney for Applicant